

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH RAYMOND	:	
McKETRICK,	:	
	:	Civil Action No. 4: 06-CV-543
Petitioner,	:	
	:	(Judge McClure)
v.	:	
	:	(Magistrate Judge Blewitt)
WARDEN TROY WILLIAMSON,	:	
	:	
Respondent.	:	

**O R D E R**

May 10, 2006

**BACKGROUND:**

On March 15, 2006, McKettrick filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. McKettrick is currently a federal prisoner incarcerated at United States Penitentiary (USP) Lewisburg, Lewisburg, Pennsylvania. McKettrick asserts in his petition that placement in the Special Management Unit (SMU) at Lewisburg constitutes an “atypical and significant hardship” that: (1) violates his liberty interests; (2) violates his rights to due process; and (3) violates his rights because he states that there is no Bureau of Prisons policy statement or criteria governing the SMU program. In his petition McKettrick notes that he has already filed a Bivens action alleging these claims which is before this court and docketed to case number 4:06-CV-329. McKettrick

commenced that litigation on February 14, 2006.

Both of McKettrick's cases were initially referred to United States Magistrate Judge Thomas M. Blewitt. On March 22, 2006, Magistrate Judge Blewitt issued a sixteen-page report recommending that McKettrick's petition be construed as a Bivens action, that to the extent the petition raises a due process claim it be dismissed for failure to state a claim, and that to the extent it raises a First Amendment claim the action be consolidated with McKettrick's previous Bivens action. The magistrate judge issued a report and recommendation on McKettrick's Bivens action on March 21, 2006.

McKettrick requested an extension of time to file his objections to the magistrate judge's report and recommendations in both cases, which we granted. On May 9, 2006, McKettrick filed objections to the magistrate judge's report docketed to case number 06-CV-329, which is McKettrick's Bivens action. In those objections, McKettrick, who is pro se, erroneously asserts that his actions have been consolidated. This is not the case, as the magistrate has only recommended that the cases be consolidated. Nevertheless, we will treat McKettrick's filings as objections to both the magistrate judge's report filed at case numbers 06-CV-329 and 06-CV-543. For the following reasons we will adopt the magistrate judge's report in part and will dismiss McKettrick's petition under 28

U.S.C. § 2241.

## **DISCUSSION:**

### **I. RELEVANT LEGAL STANDARD**

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

### **II. McKETTRICK'S PETITION SHOULD NOT BE CONSTRUED AS A CIVIL ACTION AND SHOULD BE DISMISSED BECAUSE IT CHALLENGES THE CONDITIONS OF HIS CONFINEMENT WHICH ARE PROPERLY BROUGHT IN A BIVENS ACTION**

McKetrick does not challenge "the fact or duration of his physical confinement itself, . . . [nor does he] seek[] immediate release or a speedier release from that confinement—the heart of habeas corpus." Preiser v. Rodriguez, 411 U.S. 475, 498 (1973). Instead, McKetrick complains of the conditions and procedures of Lewisburg's SMU confined housing. We agree with the magistrate judge that petitioner's claim could be construed as a civil rights action under Bivens challenging the conditions of his prison life.

Nevertheless, we find that construing McKetrick's filing as such would not be appropriate. The filing fee for a habeas corpus petition is five dollars. The filing

fee for a civil action is now three hundred and fifty dollars. If we were to simply construe habeas petitions as civil actions, prisoners would easily circumvent the normal filing process for civil actions and abuse habeas corpus. We will adopt the magistrate judge's report in part, to the extent it is consistent with this order, and will dismiss McKettrick's petition under 28 U.S.C. § 2241.<sup>1</sup>

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. The Report and Recommendation of United States Magistrate Judge Thomas M. Blewitt is adopted in part. (Rec. Doc. No. 2.)
2. Kenneth Raymond McKettrick's petition for a writ of habeas corpus under 28 U.S.C. § 2241 is dismissed.
3. The clerk is directed to close the case file.

\_\_\_\_\_  
s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge

---

<sup>1</sup>McKettrick's objections to the magistrate judge's report and recommendation contain an amended complaint relating to his Bivens action.